

ASSEMBLY BILL

No. 1760

**Introduced by Committee on Insurance (Vargas (Chair),
Calderon, Karnette, Lieber, Nava, and Umberg)**

March 16, 2005

An act to amend Sections 10234.6, 10089.79, 11691, 11692, 11692.5, 11693, and 11694 of, to add Section 11694.5 to, and to repeal Section 1660 of the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 1760, as introduced, Committee on Insurance. Insurance.

(1) Existing law requires the Insurance Commissioner to, by June 1 of each year, design the format and content of a consumer rate guide for long-term care insurance. Existing law requires the consumer rate guide to include a history of the rates for all policies issued in the United States on or after January 1, 1990.

This bill would instead require the consumer rate guide to include a history of the rates for all policies issued in California for the current year and the 4 preceding years.

(2) Existing law provides for the regulation, by the commissioner, of insurers desiring to reinsure the injury, disablement, or death portions of policies of workers' compensation insurance under the class of disability insurance. Existing law requires these insurers to deposit cash instruments or certain interest-bearing securities or stocks with specified financial institutions. Existing law requires these deposits to be made or adjusted by April 1 of each year.

This bill would instead require the deposits to be made or adjusted by March 31 of each year. The bill would require the approval of the commissioner to withdraw any amount of these deposits. The bill would revise the fees that are required to be paid to the commissioner

for certain filings. The bill would require these insurers and reinsurers to file a report with the commissioner each year that valuates and details the deposits.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1660 of the Insurance Code is repealed.
2 ~~1660. The stipulation and agreement referred to in Section~~
3 ~~1659 shall give jurisdiction over, and shall be binding pursuant to~~
4 ~~its terms upon, the person executing it.~~
5 ~~Service may be made upon the commissioner under the~~
6 ~~circumstances described in the agreement or stipulation and in~~
7 ~~the manner as provided in Article 1 (commencing with Section~~
8 ~~12919) of Chapter 2 of Division 3.~~
9 SEC. 2. Section 10234.6 of the Insurance Code is amended to
10 read:
11 10234.6. (a) The commissioner shall, by June 1 of each year,
12 jointly design the format and content of a consumer rate guide for
13 long-term care insurance with a working group that includes
14 representatives of the Health Insurance Counseling and
15 Advocacy Program, the insurance industry, and insurance agents.
16 The commissioner shall annually prepare the consumer rate
17 guide for long-term care insurance that shall include, but not be
18 limited to, the following information:
19 (1) A comparison of the different types of long-term care
20 insurance and coverages available to California consumers.
21 (2) A premium history of each insurer that writes long-term
22 care policies for all the types of long-term care insurance and
23 coverages issued by the insurer in ~~each state~~ *California*.
24 (b) The consumer rate guide to be prepared by the
25 commissioner shall consist of two parts: a history of the rates for
26 all policies issued in ~~the United States on or after January 1, 1990~~
27 *California for the current year and for four preceding years*, and
28 a comparison of the policies, benefits, and sample premiums for
29 all policies currently being issued for delivery in California.
30 (1) For the rate history portion of the rate guide required by
31 this section, the department shall collect, and each insurer shall
32 provide to the department, all of the following information for

1 each long-term care policy, including all policies, whether issued
2 by the insurer or purchased or acquired from another insurer,
3 issued in the United States on or after January 1, 1990 *California*
4 *for the current year and for four preceding years:*
5 (A) Company name.
6 (B) Policy type.
7 (C) Policy form identification.
8 (D) Dates sold.
9 (E) Date acquired (if applicable)
10 (F) Premium rate increases requested.
11 (G) Premium rate increases approved.
12 (H) Dates of premium rate increase approvals.
13 (I) Any other information requested by the department.
14 (2) For the policy comparison portion of the rate guide
15 required by this section, the department shall collect, and each
16 insurer shall provide to the department, the information needed to
17 complete the following form, along with any other information
18 requested by the department, for each long-term care policy
19 currently issued for delivery in California, including all policies,
20 whether issued by the insurer or purchased or acquired from
21 another insurer:

- 1 NOTE TO PRINTING OFFICE: Insert Camera-Ready Copy
- 2 Here
- 3 for Insurance Company Policy Benefit information form
- 4 as published on page 3 of Ch. 560, Stats. 2000.

If an insurer does not offer a policy for sale that fits the criteria set forth in the sample premium portion of the policy comparison section of the rate guide, the department shall include in that section of the form for that policy a statement explaining that a policy fitting that criteria is not offered by the insurer and that the consumer may seek, from an agent, sample premium information for the insurer's policy that most closely resembles the policy in the sample.

The department shall use the format set forth in this section for the policy comparison portion of the rate guide, unless the working group convened pursuant to subdivision (a) designs an alternative format and agrees that it should be used instead.

In compiling the policy comparison portion of the rate guide, the department shall separate the group policies from the individual policies available for sale so that group policies for all insurers appear together in the guide and individual policies for all insurers appear together in the guide.

The policy comparison portion of the rate guide shall contain a cross-reference for each policy form listed indicating the page in the rate guide where rate information on the policy form can be found.

(c) Insurers shall provide the information required pursuant to subdivision (b) no later than July 31 of each year, commencing in 2000.

(d) The consumer rate guide shall be published no later than December 1st of each year commencing in 2000, and shall be distributed using all of the following methods:

(1) Through Health Insurance Counseling and Advocacy Program (HICAP) offices.

(2) By telephone using the department's consumer toll-free telephone number.

(3) On the department's Internet web site.

(4) A notice in the Long-Term Care Insurance Personal Worksheet required by Section 10234.95.

(e) Notwithstanding any other provision of law, the data submitted by insurers to the department pursuant to this section are public records, and shall be open to inspection by members of the public pursuant to the procedures of the California Public Records Act. However, a trade secret, as defined in subdivision

(d) of Section 3426.1 of the Civil Code, is not subject to this subdivision.

SEC. 3. Section 10089.79 of the Insurance Code is amended to read:

10089.79. (a) The costs of mediation shall be reasonable, and shall be borne by the insurer, except as provided in Section 10089.81. The commissioner may set a fee not to exceed seven hundred dollars (\$700) for each dispute mediated *arising under automobile collision coverage or automobile physical damage in a policy as defined in Section 660* pursuant to subdivision (a) of Section 10089.70, and one thousand five hundred dollars (\$1,500) for each dispute mediated *arising from any earthquake occurring on or after January 1, 2006, pursuant to subdivision (a) or pursuant to subdivision (b)* of that section.

(b) The administrative expenses for the mediation program shall be paid from existing resources available to the department. If additional resources are required by the department, those resources shall be made available by an annual appropriation in the Budget Act.

SEC. 4. Section 11691 of the Insurance Code is amended to read:

11691. (a) In order to provide protection to the workers of this state in the event that the insurers issuing workers' compensation insurance to employers fail to pay compensable workers' compensation claims, when due, except in the case of the State Compensation Insurance Fund, every insurer desiring admission to transact workers' compensation insurance, or workers' compensation reinsurance business, or desiring to reinsure the injury, disablement, or death portions of policies of workers' compensation insurance under the class of disability insurance shall, as a prerequisite to admission, or ability to reinsure the injury, disablement, or death portion of policies of workers' compensation insurance under the class of disability insurance, deposit cash instruments or approved interest-bearing securities or approved stocks readily convertible into cash, investment certificates, or share accounts issued by a savings and loan association doing business in this state and insured by the Federal Deposit Insurance Corporation, certificates of deposit or savings deposits in a bank licensed to do business in this state, or approved letters of credit that perform in material respects as any

1 other security allowable as a form of deposit for purposes of a
2 workers' compensation deposit and that meet the standard set
3 forth in Section 922.5, or approved securities registered with a
4 qualified depository located in a reciprocal state as defined in
5 Section 1104.9, with that deposit to be in an amount and subject
6 to any exceptions as set forth in this article. The deposit shall be
7 made from time to time as demanded by the commissioner and
8 may be made with the Treasurer, or a bank or savings and loan
9 association authorized to engage in the trust business pursuant to
10 Division 1 (commencing with Section 99) or Division 2
11 (commencing with Section 5000) of the Financial Code, or a trust
12 company. A deposit of securities registered with a qualified
13 depository located in a reciprocal state as defined in Section
14 1104.9 may only be made in a bank or savings and loan
15 association authorized to engage in the trust business pursuant to
16 Division 1 (commencing with Section 99) or Division 2
17 (commencing with Section 5000) of the Financial Code, or a trust
18 company, licensed to do business and located in this state that is
19 a qualified custodian as defined in paragraph (1) of subdivision
20 (a) of Section 1104.9 and that maintains deposits of at least seven
21 hundred fifty million dollars (\$750,000,000). The deposit shall be
22 made subject to the approval of the commissioner under those
23 rules and regulations that he or she shall promulgate. The deposit
24 shall be maintained at a deposit value specified by the
25 commissioner, but in any event no less than one hundred
26 thousand dollars (\$100,000), nor less than the reserves required
27 of the insurer to be maintained under any of the provisions of
28 Article 1 (commencing with Section 11550) of Chapter 1 of Part
29 3 of Division 2, relating to loss reserves on workers'
30 compensation business of the insurer in this state, nor less than
31 the sum of the amounts specified in subdivision (a) of Section
32 11693, whichever is greater. The deposit shall be for the purpose
33 of paying compensable workers' compensation claims under
34 policies issued by the insurer or reinsured by the admitted
35 reinsurer and expenses as provided in Section 11698.02, in the
36 event the insurer or reinsurer fails to pay those claims when they
37 come due.

38 (b) Each insurer or reinsurer desiring to have the ability to
39 reinsure the injury, disablement, or death portions of policies of
40 workers' compensation under the class of disability insurance

1 shall provide prior notice to the commissioner, in the manner and
2 form prescribed by the commissioner of its intent to reinsure that
3 insurance. In the event of late notice, a late filing fee shall be
4 imposed on the reinsurer pursuant to Section 924 for failure to
5 notify the commissioner of its intent to reinsure workers'
6 compensation insurance.

7 (c) If the deposit required by this section is not made with the
8 Treasurer, then the depositor shall execute a trust agreement in a
9 form approved by the commissioner between the insurer, the
10 institution in which the deposit is made or, where applicable, the
11 qualified custodian of the deposit, and the commissioner, that
12 grants to the commissioner the authority to withdraw the deposit
13 as set forth in Sections 11691.2, 11696, 11698, and 11698.3. The
14 insurer shall also execute and deliver in duplicate to the
15 commissioner a power of attorney in favor of the commissioner
16 for the purposes specified herein, supported by a resolution of the
17 depositor's board of directors. The power of attorney and
18 director's resolution shall be on forms approved by the
19 commissioner, shall provide that the power of attorney cannot be
20 revoked or withdrawn without the consent of the commissioner,
21 and shall be acknowledged as required by law.

22 (d) (1) ~~The commissioner shall require payment of one~~
23 ~~hundred eighteen dollars (\$118) in advance as a fee fees for the~~
24 ~~initial filing of a trust agreement with a bank, savings and loan~~
25 ~~association, or trust company on deposits made pursuant to~~
26 ~~subdivision (a). An additional fee of one hundred eighteen~~
27 ~~dollars (\$118) shall be payable; for each amendment,~~
28 ~~supplement, or other change to the deposit agreement. In~~
29 ~~addition, the commissioner shall require the payment of~~
30 ~~fifty-eight dollars (\$58) in advance; for receiving and processing~~
31 ~~deposit schedules pursuant to this section. An additional fee of~~
32 ~~twenty-nine dollars (\$29) shall be payable; and for each~~
33 ~~withdrawal, substitution, or any other change in the deposit. The~~
34 ~~fees shall be set forth in the department's Schedule of Fees and~~
35 ~~Charges.~~

36 (2) *The commissioner shall require payment in advance of a*
37 *fee for the initial filing of each letter of credit utilized pursuant to*
38 *subdivision (a). In addition, the commissioner shall require*
39 *payment in advance of a fee for each amendment of a letter of*

1 *credit. The fees shall be set forth in the department's Schedule of*
2 *Fees and Charges.*

3 (e) Any workers' compensation insurer that deposits cash or
4 cash equivalents pursuant to this section shall be entitled to a
5 prompt refund of those deposits in excess of the amount
6 determined by the commissioner pursuant to subdivision (a). The
7 commissioner shall cause to be refunded any deposits determined
8 by the commissioner to be in excess of the amount required by
9 subdivision (a) within 30 days of that determination. In the
10 alternative, an insurer may use any excess deposit funds to offset
11 a demand by the commissioner to increase its deposit due to the
12 failure of a reinsurer to make a deposit pursuant to this section.

13 (f) (1) As of January 1, 2003, an admitted insurer reinsuring
14 business covered in this article (hereafter referred to as reinsurer)
15 shall identify to the commissioner, in a form prescribed by the
16 commissioner, amounts deposited for credit in the name of each
17 ceding insurer.

18 (2) Beginning January 1, 2005, all reinsurance agreements
19 covering claims and obligations under business covered by this
20 article, and allowable for purposes of granting a ceding carrier a
21 deposit credit, shall include a provision granting the
22 commissioner, in the event of a delinquency proceeding,
23 receivership, or insolvency of a ceding insurer, any sums from a
24 reinsurer's deposit that are necessary for the commissioner to pay
25 those reinsured claims and obligations, or to ensure their
26 payment by the California Insurance Guarantee Association,
27 deemed by the commissioner due under the reinsurance
28 agreement, upon failure of the reinsurer for any reason to make
29 payments under the policy of reinsurance. The commissioner
30 shall give 30 days' notice prior to drawing upon these funds of an
31 intent to do so. Notwithstanding the commissioner's right to
32 draw on these funds, the reinsurer shall otherwise retain its right
33 to determine the validity of those claims and obligations and to
34 contest their payment under the reinsurance agreement. Prior to a
35 reinsurer's deposit being drawn upon, in whole or in part, by the
36 department, the department shall provide a reinsurer with an
37 explanation of procedures that a reinsurer may use to explain to
38 the department why the use of the reinsurer's deposit may not be
39 appropriate under the reinsurance agreement.

(3) No reinsurer entering into a contract identified in paragraph (2), beginning on or after January 1, 2005, may cede claims or obligations assumed from a ceding insurer unless the deposit securing the ceded claims or obligations is governed by paragraph (2) or, upon approval of the commissioner, would secure the ceded claims or obligations in all material respects and in the same manner as a deposit identified in paragraph (2) above.

(4) All sums received from the reinsurer by the commissioner for those claims paid by the California Insurance Guarantee Association shall be held separate and apart from and not included in the general assets of the insolvent insurer, and shall be transferred to the California Insurance Guarantee Association upon receipt by the commissioner. In the event of a final judgment or settlement adverse to the drawing of funds by the commissioner pursuant to paragraph (2) or (3), the California Insurance Guarantee Association shall repay funds it obtained to pay covered claims and shall, if necessary, either levy a surcharge as needed or seek legislative approval to levy the surcharge if the California Insurance Guarantee Association is already levying the maximum surcharge permissible under law.

(g) If a reinsurer has not maintained deposits as required by subdivision (a) in amounts equal to the amounts of deposit credits claimed by its ceding insurers, the commissioner, after notifying the reinsurer and its ceding insurers of the deposit shortfall and allowing 15 days from the date of the notice for the deposit shortfall to be corrected, may disallow all or a portion of the reserve credits claimed by the ceding insurers. A ceding insurer disallowed a reserve credit pursuant to this provision shall immediately make the deposit required by this section.

(h) For interest bearing securities that are debt securities and include principal payment features prior to maturity that are utilized pursuant to subdivision (a), all principal payments received must be retained as part of the deposit.

(i) Withdrawal of any amount of the deposit required under subdivision (a) that results in a reduction of the required amount of the deposit may only occur with the prior written consent of the commissioner.

SEC. 5. Section 11692 of the Insurance Code is amended to read:

1 11692. A certificate of authority to transact workers'
2 compensation insurance in this state shall not be issued nor
3 renewed to any insurer until the deposit required pursuant to
4 Section 11691 is approved by the commissioner.—The
5 commissioner shall notify the Division of Workers'
6 Compensation of the Department of Industrial Relations
7 concerning the approval of every deposit made pursuant to this
8 article.

9 SEC. 6. Section 11692.5 of the Insurance Code is amended to
10 read:

11 11692.5. On and after the effective date of this article, the
12 commissioner shall collect a late filing fee from any admitted
13 insurer or reinsurer that fails to deposit the securities when
14 required by this code in the following amount:

15 (a) If the deposit shortfall is outstanding for less than 31 days,
16 0.5 percent of the deposit shortfall, but in no event not less than
17 six hundred dollars (\$600).

18 (b) If the deposit shortfall is outstanding for more than 30 days
19 but less than 61 days, an additional late filing fee in the amount
20 of 1 percent of the deposit shortfall, but in no event not less than
21 one thousand two hundred dollars (\$1,200) shall be due.

22 (c) ~~An~~ *If the deposit shortfall is outstanding for 61 days or*
23 *greater, an* additional late filing fee of 1.5 percent of the deposit
24 shortfall for every 30-day period thereafter, or fraction thereof,
25 ~~that the amount is outstanding, but in no event shall the total this~~
26 *portion of the late filing fee for each additional 30-day period or*
27 *fraction thereof* be less than three thousand dollars (\$3,000). The
28 late filing fees provided herein are in addition to all other rights
29 and remedies granted the commissioner by this article.

30 SEC. 7. Section 11693 of the Insurance Code is amended to
31 read:

32 11693. The deposit required pursuant to Section 11691 shall
33 be made or adjusted on or prior to ~~April 1~~ *March 31* of each year
34 in an amount as follows:

35 (a) Not less than the sum of the following amounts computed,
36 less credits and deductions allowable with respect to reinsurance
37 in admitted insurers, as provided under Section 11691, as of the
38 close of the last preceding December 31 or as of any calendar
39 quarter end as directed by the commissioner pursuant to Section

1 11694 in respect to workers' compensation insurance written
2 subject to the workers' compensation laws of this state:

3 (1) The aggregate of the present values at 6 percent interest, or
4 at the rate of the company's investment yield as determined by
5 the NAIC Insurance Regulatory Information System Ratio
6 Number 5 for Property and Casualty Companies, whichever is
7 lower, of the determined and estimated future payments upon
8 compensation claims not included in paragraph (2), including in
9 those claims both benefits and loss expenses.

10 (2) The aggregate of the amounts computed as follows:

11 For each of the preceding three years, 65 percent of the earned
12 compensation premiums for that year less all loss and loss
13 expense payments made upon claims incurred in the
14 corresponding year from that 65 percent; except that the amount
15 for each year shall not be less than the present value at 6 percent
16 interest of the determined and the estimated unpaid claims
17 incurred in that year, including both benefits and loss expenses.

18 (b) Not less than one hundred thousand dollars (\$100,000).

19 (c) If the aggregate amount computed under subdivision (a)
20 exceeds fifty thousand dollars (\$50,000), not more than double
21 the aggregate amount.

22 (d) *The commissioner shall utilize Bloomberg or other similar*
23 *securities valuation software programs for valuating securities*
24 *held in workers' compensation deposits of insurers authorized to*
25 *transact workers' compensation insurance in California as a*
26 *direct writer, reinsurer, or those reinsuring workers'*
27 *compensation under the class of disability.*

28 SEC. 8. Section 11694 of the Insurance Code is amended to
29 read:

30 11694. After the first annual statement to the commissioner
31 covering business of the insurer for a full year in this state, the
32 deposit required pursuant to Section 11691 shall be computed
33 from the figures shown in the last preceding report of business as
34 of December 31, filed with the commissioner, and shall be
35 reported to the commissioner on or before March 1 of each year
36 in a form *and manner* prescribed by the commissioner.
37 Notwithstanding anything to the contrary in this article, should
38 the commissioner determine that there has been a material
39 change in the insurer's ultimate liability for future payments
40 upon compensable workers' compensation claims in this state, at

1 the commissioner's discretion, the amount of the deposit shall
2 then be fixed by the commissioner at the amount that he or she
3 deems sufficient to secure the payment of the insurer's ultimate
4 obligations on its workers' compensation insurance transacted in
5 this state, and upon notification from the commissioner the
6 insurer shall immediately but in no event less than 30 days after
7 notification, increase the deposit as directed.

8 SEC. 9. Section 11694.5 is added to the Insurance Code, to
9 read:

10 11694.5. On or before March 1 and May 15 of each year, the
11 insurers or reinsurers subject to Section 11694 shall file a report
12 in the form and manner prescribed by the commissioner that
13 valuates and details the deposit as of December 31 of the
14 preceding year and March 31 of the current year. The
15 commissioner may require additional reporting by any insurer or
16 reinsurer with it is deemed necessary.

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18
19 **CORRECTIONS:**

20 **Text - Page 4.**
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